

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL ALLEN SWIHART,

Case No.1:06-CV-649

Plaintiff,

Hon. Richard Alan Enslen

v.

STATE OF MICHIGAN,

JUDGMENT

Defendant. /

This matter is before the Court on Plaintiff Michael Allen Swihart's Objection to United States Magistrate Judge Ellen S. Carmody's Report and Recommendation ("Report") of September 28, 2006, recommending that Plaintiff's Complaint be dismissed for failure to state a claim upon which relief can be granted. This Court reviews the Report, Plaintiff's Objection, and pertinent portions of the record *de novo* in accordance with 28 U.S.C. § 636(b)(1)(B).

Plaintiff objects to the Magistrate Judge's observation that if Plaintiff was not convicted under the "Criminal Sexual Conduct" law, Plaintiff would lack standing to challenge the statute. Plaintiff asserts he was previously convicted under the statute in 1996 and again in 2000. Regardless, Plaintiff's Complaint still fails to state a claim upon which relief can be granted.¹ As aptly stated in the Report, Plaintiff may not maintain a 42 U.S.C. § 1983 claim against the State of Michigan, as it is immune from suit under the Eleventh Amendment. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 98-101 (1984). Further, the Court agrees with the Report that as

¹Plaintiff also cites to the Double Jeopardy Clause in his Objection; however, as Plaintiff merely quotes a passage concerning the Clause and does not implicate or explain how it has or could have been violated, the Court will not address this issue.

to Plaintiff's state law claims, the Court will decline jurisdiction. *See Faughender v. City of N. Olmstead, Ohio*, 927 F.2d 909, 917 (6th Cir. 1991).

THEREFORE, IT IS HEREBY ORDERED that Plaintiff Michael Allen Swihart's Objection to the Report and Recommendation (Dkt. No. 6) is **DENIED** and the Report and Recommendation (Dkt. No. 5) is **ADOPTED**.

IT IS FURTHER ORDERED that Plaintiff Michael Allen Swihart's federal law claims are **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that Plaintiff's state law claims are **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that dismissal of this action shall count as a **STRIKE** for purposes of 28 U.S.C. § 1915(g).

IT IS FURTHER ORDERED that the Court certifies that an appeal from this action would not be in good faith pursuant to 28 U.S.C. § 1915(a)(3).

DATED in Kalamazoo, MI:
November 17, 2006

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE